IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION No: 6604 of 2000

Between:

Dr. K. Krishna Mohan S/o. Late Somayya
R/o. Devi Nursing Home, Gurazala Guntur District.

..... PETITIONER

AND

1 The Superintending Engineer, Assessments Circle A.P. TRANSCO, Vijayawada, Krishna District.
2 The Divisional Engineer, Assessments, A.P.S.E.B., Vijayawada, Krishna District.
3 The Asst. Divisional Engineer, Construction & Operation, A.P.S.E.B., Gurazala, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari call for the records relating to and in connection with impugned order of the first respondent in Proceedings No. SP./927/D.MCL/AF49/D.No.324/2000, dt; 18-2-2000 and to declare the same as illegal, arbitrary and consequentially to quash the said proceedings by directing the Respondents to pay back the amount already deposited by the petitioner with interest.

Counsel for the Petitioner: MR.K.ANANDA RAO

Counsel for the Respondents: V.AJAY KUMAR (SC FOR APTRANSCO)

The Court made the following:

ORAL ORDER:-

This Writ Petition is filed, challenging the order dated 18.02.2000 passed by the Superintending Engineer Assessments Circle, A.P. TRANSCO, Vijayawada, in proceedings No.SAP.927/D.MCL/AF49/D.No.324/2000.

The petitioner herein is consumer of electricity from the respondent-A.P. Transco, vide service connection bearing S.C.No.1383 of Gurujala under Category II. The above said service connection was inspected by the Assistant Divisional Engineer, Guntur on 12.05.1997 at 11.30 a.m. on the ground that the petitioner has indulged in malpractice, by pilferage of energy, proceedings were initiated to assess the loss. At the first instance, provisional assessment was made in proceedings No.ADE/O.GZL/F/d.No.282/97, dated 21.05.1997, assessing the loss at Rs.2,06,186/- and there was immediate demand for payment of Rs.1,03,093/- to continue the supply. As against the said demand notice, the petitioner herein, earlier filed Writ Petition No.11277 of 1997 before this Court, and, this Court in the above said writ petition has passed interim orders, directing the respondents to continue supply, subject to payment of $1/4^{th}$ of the loss assessed, in the provisional assessment proceedings. It is stated, an amount of Rs.52,000/- was deposited as per the interim orders passed by this Court in the earlier Writ Petition. Subsequently, final proceedings were initiated to assess the loss, and the petitioner was issued notice dated 26.07.1997, in proceedings No. DE/A/VJA/AE.DoC.No.MCL/16/D.No.1209 by the Divisional Engineer Assessments, Vijayawada, inviting objections for the said assessment. It is relevant to mention here, that the assessment period was notified to the petitioner from 13.05.1996 to 12.05.1997. In the final assessment proceedings, final orders were passed on 24.02.1998 quantifying the loss at Rs.1,12,658/-, in addition to supervision and

miscellaneous charges of Rs.200/-.

As against the said order, the petitioner herein has preferred appeal before the appellate authority, as provided under the terms and conditions of supply. The appellate authority, i.e., Superintending Engineer, Assessments Circle, Vijayawada, by the impugned order dated 18.02.2000, partly allowed the appeal, by revising the demand from Rs.1,12,658/- to Rs.59,855.45 Ps, in addition to supervision and reconnection charges of Rs.200/-, but, however, the appellate authority has assessed the loss for the period from 13.11.1995 to 12.05.1997. The said order of the appellate authority, is under challenge in this Writ petition.

It is submitted by Sri K.Ananda Rao, the learned Counsel appearing for the petitioner, that the final assessment proceedings were initiated only for the period from 13.05.1996 to 12.05.1997 and with reference to the said period only, objections were invited, but, however, final orders were passed going beyond the said period, and demand is made from 13.11.1995 onwards. Precisely, it is the submission of the learned Counsel that final orders are passed assessing the loss for the period, for which opportunity was not given to the petitioner. It is further submitted by the learned counsel for the petitioner that with reference to the very inspection, the petitioner was also charge-sheeted in Criminal proceedings, and was tried on the file of the II Additional Munisf Magistrate, Gurazala, and by judgment dated 13.12.1998, the petitioner was acquitted in the criminal proceedings. As such, it is submitted, in view of acquittal in the criminal proceedings, the impugned order cannot be sustained.

On the other hand, it is submitted by Sri Ajay Kumar, the learned Counsel appearing for the respondents-A.P. Transco, that pursuant to the complaint by one of the consumers, inspection was done, and during the inspection, it was found that the petitioner has indulged in malpractice of energy by pilfering the same. It is submitted that as much as the petitioner has indulged in malpractice, loss on account of energy was assessed as per the terms and conditions of supply, and, orders were passed, and there are no grounds to interfere with the same. Further, it is submitted that, as it came to notice that the petitioner has indulged in malpractice even prior to 13.05.1996, loss was assessed for the period starting from 13.11.1995.

Having regard to the above submissions, I have perused the notice dated 21.05.1997 issued in letter No.ADE/O.GZL/F/D.No.282/97 and final assessment

order dated 24.02.1998, issued in proceedings No.1175/DE/A/VJA/Doc.MCL.16/D.No.378/98. Pursuant to the inspection made, proceedings were initiated to assess the loss. At first instance, the loss was assessed on provisional basis, and the petitioner was not provided any opportunity at that stage. In the final assessment proceedings, the petitioner was issued notice inviting objections from him and period was specifically mentioned as from 13.05.1996 to 12.05.1997. It is stated, with reference to the said period only, the petitioner had filed his objections, but, however, orders were passed finally assessing the loss from 13.11.1995 onwards. In the final assessment proceedings, when proceedings were initiated to assess the loss for the period from 13.05.1996 to 12.05.1997, and when the petitioner was given opportunity to file objections only for the said period, the respondents should have confined, to assess the loss for the said period only. The order of the final assessing authority, making demand by assessing the loss from 13.11.1995 to 12.05.1997 is clearly illegal, and, in violation of principles of natural justice. Even the appellate authority, though revised the demand, but, however, confirmed for the period from 13.11.1995. As such, the impugned order of the appellate authority is liable to be set aside to this extent. But, at the same time, it is further submitted by the learned counsel for the petitioner, that the petitioner was acquitted in the criminal proceedings, as such, the impugned order is not sustainable. But, the same is no ground to set aside the order passed by the assessing authority. In the case of ***J.M.D. ALLOYS LIMITED Vs. BIHAR STATE ELECTRICITY BOARD***, the Apex Court has held that the trial of an accused in criminal case can have no bearing in the matter of assessment, made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. In view of the above judgment, the submission of the learned Counsel for the petitioner cannot be accepted.

For the foregoing reasons, the Writ Petition is allowed, setting aside the demand made in the impugned proceedings only to the extent of assessing the loss for the period from 13.11.1995 to 12.05.1996. Further I direct the respondents to confine the demand for the period from 13.11.1996 to 12.05.1997 and take steps accordingly to revise the demand. As much as, the petitioner has already deposited Rs.52,000/- pursuant to the interim orders in Writ Petition No.1297 of 1997, if the petitioner is entitle for refund of any amount, by calculating the demand from 13.05.1996 to 12.05.1997, the respondents are directed to refund the excess amount to the petitioner. Even after revision of the demand, as per the directions issued in

this order, any amount is payable by the petitioner, it is open for the respondents to issue notice and collect the balance amount, payable by the petitioner.

The Writ Petition is allowed partly, to the extent indicated above. No order as to costs.

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JUSTICE R. SUBHASH REDDY

Date: 05.07.2005

ES/MSNR

To

1 The Superintending Engineer, Assessments Circle A.P. TRANSCO, Vijayawada, Krishna District.
2 The Divisional Engineer, Assessments, A.P.S.E.B., Vijayawada, Krishna District.
3 The Asst. Divisional Engineer, Construction & Operation, A.P.S.E.B., Gurazala, Guntur District.

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5 1 CC to MR.ANANDA RAO